

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
LESLIE CHARTERIS )

OPINION ON PETITION FOR REHEARING

A petition for rehearing has been submitted by the Appellant pursuant to Section 18596 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Act) in the matter of the Appeal of Leslie Charteris in which this Board sustained the action of the Franchise Tax Commissioner in overruling the Appellant's protest to a proposed assessment of additional tax in the amount of \$734.98 for the taxable year ended December 31, 1940.

The single issue involved in the Appeal was whether the Appellant was properly to be regarded as a resident of California during the taxable year 1940, within the meaning of Section 2(k) of the Act as amended in 1937. Under that Section, he was presumed to be a resident of California since he had spent more than nine months of the taxable year within this State. He did not, in our opinion, present sufficient evidence to overcome that presumption.

The Appellant has now submitted certain "Supplemental Data and Information" in an effort to support his position. It appears that this information, in the main, was heretofore presented by brief and by testimony. Such information indicates that the Appellant maintained the bulk of his funds without California, and that having entered the United States on a visitor's visa in 1939, he did not make application for permanent resident status until 1941. It is again argued that he remained in California for vacation purposes and to obtain local color, living only in temporary abodes.

There does not appear to be any substantial difference of opinion between the Appellant and the Commissioner respecting the legal principles to be applied in determining residence. Under the Commissioner's regulations an individual actually present in this State who is not a mere transient or sojourner is a resident of California within the meaning of the income tax law. If the individual lives in California and has no definite intention as to his stay, he is a resident. One who comes to California for a definite purpose which in its nature may be promptly accomplished is properly to be regarded as a transient, but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, he becomes a resident, though it may be his intention at all times to return to his domicile when his purpose has been consummated. Articles 2(k)--1, 2(k)--2, Regulations Relating to the Personal Income Tax Act of 1935, as amended in 1939.

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As is usual in situations of this type, certain facts indicate a resident and others a non-resident status. We remain of the opinion, however, that the evidence considered in its entirety, together with the law and pertinent regulations, sustain the conclusion that the Appellant is properly to be regarded as a resident for that year. He was then living in California, had no definite intention as to his stay and did not come here for only a definite purpose which in its nature might be promptly accomplished. He attaches great significance to the fact that he entered this country under a visitor's visa, but the type of visa issued is only one of the elements entering into the classification of the alien as a resident or a nonresident. See Bureau of Internal Revenue, Mim. 5883, I.R.B. 1945-13, (June 27, 1945) which provides that the possession of a visitor's visa is not conclusive of an alien's classification as a non-resident of this country.

In the light of these considerations and those set forth in our former opinion in this Appeal, we adhere to the view that the Commissioner did not act unreasonably in determining that the Appellant was during 1940 a resident of this State within the meaning of Section 2(k) of the Personal Income Tax Act.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition for Rehearing filed by Leslie Charteris with respect to his Appeal, concerning which an opinion was rendered and an order was made on July 19, 1944, sustaining the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of said Leslie Charteris to a proposed assessment of additional tax in the amount of \$734.98 for the taxable year ended December 31, 1940, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby denied.

Done at Sacramento, California, this 28th day of March, 1946, by the State Board of Equalization.

R. E. Collins, Chairman  
J. H. Quinn, Member  
Wm. G. Bonelli, Member  
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary